argued that the form of the licence, taken from Form N in the Ordinance, operated as a condition precedent against the sale of beer. This clearly cannot be so, as Form N purports to be made under the provisions of section 38 which specifically permits the sale of beer in bottles. The words of the licence merely repeat from the Ordinance itself, the liquors to which the Licensing Officer's authority does not extend in the granting of liquor-shop licences. *Prima facie* under section 38(1) every person has a statutory right to sell beer in unopened bottles. I do not say that it might not be made a condition of granting a liquor-shop licence that the licensee should abandon such statutory right, but this is not what has been done, and I prefer to express no opinion as to whether such a condition would or would not be valid.

In any case the accused was not charged with contravening the provisions of either the licence itself or of section 38(3) (a). He is charged with an offence against rule 57, and as I have said, I find that this rule is inconsistent with the express provisions of section 38(1) of the Ordinance and is accordingly *ultra vires*.

It is more usual, when a Magistrate feels a doubt, as to the validity of a by-law, for the Magistrate to convict, and then state a case. The procedure followed by the learned Magistrate in this case is not, however, without precedent in England (see *Leyton Urban District Council* v. *Chew* (1937) 2 K.B. p. 283), and I am not prepared to say that it is not a proper procedure.

In the result, therefore, I find that the decision of the learned Magistrate is correct.

Appeal dismissed.

Solicitors for the Appellant—
Messrs. Shelley Thompson & Demuth.

[APPELLATE CRIMINAL JURISDICTION]
TERRELL, J.
May 9, 1938.

REX v. FOO SEE CHENG.

[SINGAPORE MAGISTRATE'S APPEAL No. 23 of 1938]

Common Gaming Houses Ordinance (Cap. 30), s. 4(b) and s. 14.

In a charge under s. 4(a) or s. 4(b) of the Common Gaming Houses Ordinance, the charge should allege either that the accused is the owner or that he is the occupier.

A pin table is not necessarily "an instrument or appliance for gaming" but if it has actually been used for gaming on any occasion, then it at once falls within the definition and the presumption under s. 14 of the Ordinance arises; and the Court must infer until the contrary is proved that the place in which the pin table is found is a common gaming house and is so left or used by the occupier thereof.

MAGISTRATE'S APPEAL.

Demuth for appellant.

N. A. Worley, Solicitor General, for the Crown.

The facts and arguments appear sufficiently from the judgment. *Cur. Adv. Vult.*

TERRELL, J.—The accused was charged with permitting premises No. 16 Colombo Court to be kept by another as a common gaming house on the 28th December 1937.

There was a similar charge in respect of the 30th December 1937. Both charges were under s. 4 (b) of the Common Gaming Houses Ordinance.

The accused appears to have been convicted upon both charges but only one punishment was recorded. On the appeal the Crown did not support the conviction on the second charge and the punishment imposed would therefore, in any case, have to be revised.

The complaint was in respect of a pin table and it was alleged that money was staked on the results obtained by the competitiors. It was admitted by the Crown that a pin table is not necessarily "an instrument or appliance for gaming," as, for instance, would be a lottery ticket. On the other hand there can I think be no doubt that if it is proved that a pin table has actually been used for gaming on any occasion, then it at once falls within the definition and the presumption under s. 14 of the Ordinance arises. As a result of such presumption the Court must infer, until the contrary is proved, that the place in which the pin table is found is a common gaming house and is so kept or used by the occupier thereof.

There was sufficient evidence, in my opinion, to give rise to these presumptions, and to support a *prima facie* charge under s. 4(a) of the Ordinance against the accused who was the occupier. If the presumption were not displaced by the evidence of the accused, a conviction would normally follow. As in the present case the accused offered no evidence, being charged under s. 4(b) and not under s. 4(a) of the Ordinance and as the conviction cannot be upheld on the second charge, I will direct that the conviction and order for forfeiture be set aside and that the fine be repaid. The case will be remitted to the Magistrate's Court for a fresh charge to be framed under s. 4(a) of the Ordinance. The pin table will be kept in the custody of the Magistrate's Court and will be dealt with on the hearing of the summons.

I would add that in a charge under s. 4(a) or s. 4(b) of the Ordinance the charge should allege either that the accused is the owner, *or* that he is the occupier. If the prosecution is in doubt as to the facts alternative charges can be framed. In the present case the prosecution had evidence that the accused was the occupier, and he should have been charged as such, and not as the "owner of occupier."

Conviction quashed. Case remitted.

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.